

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.9008 of 2007

Lok Seva Sangh & ors.

Petitioners

Vs.

Krishna Babali Naik & ors.

Respondents

Mr.C.G.Gavnekar for petitioners.

Mr.Suresh S. Pakale for respondent no.1.

CORAM: B.H.MARLAPALLE, J.
December 12, 2007.

P.C.

1. Heard Mr.Gavnekar, the learned counsel for the petitioners and Mr.Pakale, the learned counsel for the respondent no.1. By the impugned judgment and order dated 31/10/2007 the School Tribunal has allowed Appeal No.4 of 2006 filed by the respondent no.1 and consequently set aside the appointment of the present petitioner no.3 for the post of Head Master as was made with effect from 1/1/2006 and the petitioner no.1 has been directed to appoint the respondent no.1 as the Head Master of the petitioner no. 2 - school.

2. Mr.Gavnekar raised a short point on the interpretations of Rule 3(3) of the M.E.P.S. Rules, 1981 and submitted that the Tribunal was in error in holding that the service record beyond five years

preceding the date of appointment to the post of Head Master i.e. 1/1/2006 could not be considered and as per Mr.Gavnekar the management would be justified in considering the entire service record of the senior most teacher and if it is found to be adverse or if the management in its wisdom records a finding that it would not be in the interest of the school to appoint the senior most teacher as the Head Master, it would be justified in considering the next senior most teacher. In support of these arguments Mr.Gavnekar has placed reliance on a Division Bench decision of this Court (Goa Bench) in the case of Aleyama Mathai Almeida (Mrs.) Vs. State of Goa, through the Chief Secretary **[2003 III CLR 591]**.

3. Mr.Pakale, the learned counsel appearing for the respondent no.1 has supported the view taken by the Division Bench and submitted that the claim of the senior most member of the teaching faculty could be discarded only when such a senior most teacher has given in writing that he has voluntarily relinquished his claim to the said post. Mr.Pakale also submitted that even otherwise in the instant case there is no adverse noting in the ACRs of the respondent no.1 in the period preceding five years with reference to

1/1/2006.

4. There is no dispute that in the ACRs of the respondent no.1 there is no adverse entry recorded at any time and there was only one incidence of a minor penalty being imposed against him which he claims that the same was withdrawn. There is also no dispute that the petitioner no.1 had not at any time communicated in writing to the respondent no.1 any adverse remarks, if made in the ACRs. In these circumstances the School Tribunal relied upon the explanation below Rule 3 of the MEPS Rules which reads as under:

"Explanation - For the purpose of this rule the record of service shall be deemed to be satisfactory if there is nothing adverse in the annual confidential reports of the teacher concerned during the previous five years. Adverse remarks not duly communicated in writing to the teacher concerned, shall be disregarded for this purpose."

. In my considered opinion the School Tribunal rightly interpreted the explanation and recorded a

finding that the appellant was a teacher with satisfactory record of service and was undoubtedly the senior most. In the case of Aleyama Mathai Almeida (Supra) this Court interpreted Rules 75 and 76 of the Goa School Education Rules, 1986 and a provision similar to the explanation below Rule 3 of the MEPS Rules, 1981 did not fall for consideration in the said case. No doubt this Court held that over all service record was required to be considered of the senior most member of the teaching staff when he / she was being considered for the appointment of Head Master / Head Mistress. But that observation is not while interpreting Rule 3 of the MEPS Rules, 1981 and, therefore, the said observations cannot be taken as a binding precedence.

5. There is also no dispute that the petitioner

no.2 - school has only 18 classes and there is no post of Assistant Head Master, instead there is only one post of Supervisor. Undoubtedly the petitioner no.3 was appointed to the post of Supervisor sometimes in May 2004 and the said appointment was not challenged by the respondent no.1 by filing an appeal under Section 9 of the MEPS Act at any time. However, having regards to the scheme of Rule 3 and

Rule 5 read with Schedule "F" of the MEPS Rules, 1981, the petitioner no.3 cannot be treated to be senior or that he had entered Category B in Schedule "F" on account of such appointment and, therefore, both of them continued in Category C. Consequently the respondent no.1 is the senior most member of the teaching faculty and without any adverse service record. The Tribunal rightly allowed his claim. The submissions made by Mr.Gavnekar that the over all service record of a teacher should be considered while filling in the post of Head Master / Head Mistress may appear impressive but the appointment to such a post has to be made strictly as per the MEPS Rules and in any case there was no allegation that the respondent no.1 was guilty of any act of moral turpitude or that any adverse report was made in his ACRs and the same was communicated to him at any point of time.

6. Hence the petition fails at the threshold and the same is hereby rejected summarily.

(B.H.MARL